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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,500	10/20/2003	Douglas A. Wood	RSW920030199US1	4256

7590 12/08/2008
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EXAMINER

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ART UNIT	PAPER NUMBER
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2114

MAIL DATE	DELIVERY MODE
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12/08/2008

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS A. WOOD

Appeal 2008-2322
Application 10/689,500¹
Technology Center 2100

Decided: December 8, 2008

Before HOWARD B. BLANKENSHIP, JEAN R. HOMERE, and
STEPHEN C. SIU, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 2, and 4 through 9. Claims 3 and 10 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ Filed on October 20, 2003. The real party in interest is IBM Corp.

The Invention

Appellant invented a method and system for detecting the root cause behind the failure of one or more computer assets. (Spec. 3, ¶ [0023].) As depicted in Figure 3, upon detecting a failure (308) in one of the computer assets (306) being monitored, a monitoring application generates a system incident report (304). The monitoring application then matches the causes of the detected failure with corresponding symptoms from a list of pre-identified symptoms (206, 207, 208) stored in a diagnostic database (309) to thereby activate potential symptoms associated with the detected failure. (Spec. 7, ¶¶ [0049-0050].) An incident tracking application then presents to a service representative *the system incident report* including a set of activated symptoms and associated causes that characterize the current state of the computer assets. Further, the incident tracking application generates *a user incident report* containing symptoms observed and described by the user, and matches them with corresponding known causes. Additionally, the service representative compares the observed symptoms in the user incident report with the activated symptoms in the system incident report to determine common symptoms therebetween to thus gain a better indication of the root cause of the detected failure. (Spec. 8, ¶ [0054].)

Representative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1. A system for providing root cause failure information about a computer system to a user, comprising:
 - a monitoring application that monitors a plurality of assets in the computer system and that generates a system incident report when a failure of an asset of the plurality of assets is detected;
 - a diagnostic database that lists a plurality of pre-identified symptoms, including a set of potential symptoms, each pre-identified symptom being linked to at least one failure of an asset, wherein a potential symptom is activated when the monitoring application detects a failure linked to the pre-identified symptom; and
 - an incident tracking application configured to present to the user a set of activated symptoms that characterize a current state of the plurality of assets, the incident tracking application also configured to receive from the user a user incident report that includes a user-observed symptom selected by the user that corresponds to one of the set of activated symptoms the incident tracking application also configured to associate a user incident report with a system incident report when the user incident report includes a user-observed symptom that corresponds to one of the set of activated symptoms.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Douik	US 6,012,152	January 4, 2000 (filed August 21, 1997)
Hiliger	US 5,127,012	June 30, 1992 (filed February 19, 1991)

Rejection on Appeal

The Examiner rejects the claims on appeal as follows:

Claims 1, 2, and 4 through 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Douik and Hiliger.

Appellant's Contentions

Appellant argues that the combination of Douik and Hiliger does not teach or suggest (1) activating a symptom from a list of symptoms in response to an asset failure to thereby present the activated symptom to the user, and (2) associating a user incident report with a system incident report to find symptoms common to both reports, as recited in independent claim 1. (App. Br. 5-8, Reply Br. 1-4.) Particularly, Appellant argues that while the combination of Douik and Hiliger generally discusses correlating all possible symptoms including observable ones, these symptoms are neither activated nor presented to the user. (*Id.*) Accordingly, Appellant contends that the Examiner erred in rejecting the claimed invention over the cited combination. (*Id.*)

Examiner's Findings

The Examiner finds that Douik discloses a diagnosis agent that maps out all possible suspect causes of a software defect. Further, the Examiner finds that Hiliger discloses a diagnosis agent that, with the help of a repair engineer, precisely identifies errors within a specified software block. (Ans. 8.) Additionally, the Examiner finds that Hiliger teaches providing a list of symptoms to a user for selecting a condition describing the state of a document production device. (*Id.*) Therefore, the Examiner finds that the

combination of Douik and Hiliger teaches the limitation in dispute, and thus renders claim 1 unpatentable.

II. ISSUE

The pivotal issue before us is whether Appellant has shown that the Examiner erred in concluding that one of ordinary skill would have found the combination of Douik and Hiliger teaches presenting to a user a set of activated symptoms, and generating a user incident report including one of the activated symptoms, as recited in independent claim 1. We answer this inquiry in the negative.

III. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Douik

1. Douik discloses a fault management software for managing software faults in a mobile communication network. (Abstract.) Particularly, as depicted in Figure 2, Douik discloses an event report handler (24) for accepting an indication of a trouble condition as an observed symptom from an alarm and/or as a trouble report from a user to thereby generate fault reports (25) containing the respective symptoms obtained from the user and the network . (Col. 15, ll. 16-20, col. 36, ll. 30-34.)

2. Douik discloses a correlation agent (26) that receives the fault reports (25) from the event report handler (24). The correlation agent formulates fault explanations, which it associates with the symptoms. The correlation agent subsequently correlates the received symptoms through the use of a functional model to produce a smaller set of symptoms common to both the user-entered symptoms and the network generated symptoms. (Col. 15, ll. 20-27, col. 36, ll. 35-49.)

3. Douik discloses a diagnosis agent (28) (human operator/automated system) that analyzes and tests software components against their modeled behavior to verify the fault explanation obtained from the correlation agent to thereby output the software component that needs repairing. (Col. 15, ll. 32-40, col. 36, ll. 51-61.)

Hiliger

4. Hiliger discloses a diagnostic system for determining the condition of replaceable units in a document production system. (Abstract.) Particularly, Hiliger discloses displaying a list of system generated symptoms, each corresponding to a known cause and from which a repair person selects the ones that best describe the condition of the document production device. (Col. 3, ll. 7-23.)

IV. PRINCIPLES OF LAW OBVIOUSNESS

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (quoting *KSR*, 127 S. Ct. at 1739). “One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims.” *KSR*, 127 S. Ct. at 1742.

The reasoning given as support for the conclusion of obviousness can be based on interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge possessed by a person having ordinary skill in the art. *KSR*, 127 S. Ct. at 1740-41. *See also Dystar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006).

V. ANALYSIS

As detailed in the Findings of Fact section above, Douik teaches an event report handler that, upon receiving system generated alarms and/or trouble reports from a user indicating a failure of a software component on the network, generates fault reports including symptoms associated with the failure. (FF. 1.) Further, Douik teaches a correlation agent that, upon receiving the fault reports from the event report handler, associates the symptoms with corresponding causes, and compares the contents of the fault reports to detect common symptoms between them. (FF. 2.) Additionally,

Hiliger teaches providing a user with a list of system-generated symptoms in response to detecting a failure in a document production system. (FF. 4.) We find that Douik's disclosure of the event report handler receiving the system generated alarm or the user input trouble report reasonably teaches activating a symptom in response to failure. In other words, the received alarm or trouble report are triggered or activated upon detecting the failure of a software component being monitored. Similarly, we find that Douik's disclosure of the event report handler generating fault reports reasonably suggests the creation of at least one fault report having symptoms pertaining to the system-generated alarm, and one fault report containing symptoms pertaining to the user's observed failure. Accordingly, we find that Douik's disclosure of comparing the fault reports to detect common symptoms therebetween reasonably teaches the claimed limitation of associating a user incident report with a system incident report based on symptoms common to both reports. Therefore, one of ordinary skilled in the art would readily recognize that Hiliger's teaching of providing the user with a list of symptoms in response to a failure would allow the user of Douik's software fault management system to be presented with activated symptoms before generating the user incident report. Appellant has provided no evidence that incorporating Hiliger's presentation of activated symptoms to a user into Douik's software fault management system was "uniquely challenging or difficult for one of ordinary skill in the art" (*Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d at 1162) nor has Appellant presented evidence that this

incorporation would yield more than expected results. Rather, Appellant's invention is simply an arrangement of the well-known teachings of presenting activated symptoms to a user with the known teaching of allowing the user to create an incident report upon receiving a system-generated report. The Supreme Court has determined that "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR*, 127 S. Ct. at 1742. Therefore, it is our view that a person of ordinary skill would have been able to fit the teachings of the cited references together like pieces of a puzzle.

Accordingly, we find that claim 1 would have been obvious over the teachings of Douik and Hiliger. It follows that Appellant has not shown that the Examiner erred in concluding that the combination of Douik and Hiliger renders independent claim 1 unpatentable.

Appellant does not separately argue claims 1, 2, and 4 through 9. Therefore, we select independent claim 1 as being representative of the cited claims. Consequently, claims 2, and 4 through 9 fall together with representative claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

VI. CONCLUSION OF LAW

Appellant has not shown that the Examiner erred in concluding that the combination of Douik and Hiliger renders claims 1, 2, and 4 through 9 unpatentable under 35 U.S.C. § 103(a).

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VII. DECISION

We affirm the Examiner's decision rejecting claims 1, 2, and 4 through 9 as being unpatentable under 35 U.S.C. § 103(a) .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc

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